



FWH:SRM:DLKaplan

U.S. Department of Justice
Civil Division, Appellate Staff
601 D Street, N.W. Room 9539
Washington, D.C. 20530-0001

EX PARTE OR LATE FILED

Tel: (202) 514-5083
Fax: (202) 514-7964

October 14, 1998

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED
OCT 14 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **EX PARTE PRESENTATION**
In the Matter Of: Communications Assistance for Law Enforcement Act
CC Docket No. 97-213 ✓

Dear Ms. Salas:

On October 13, 1998, representatives of the Department of Justice, Federal Bureau of Investigation, and Booz-Allen & Hamilton ("the Department") met with representatives of the Federal Communications Commission ("the Commission") to discuss the above-referenced matter. Present from the Department of Justice were Attorney General Janet Reno, Stephen R. Colgate, Daniel L. Kaplan, Douglas N. Letter, Robert S. Litt, Scott R. McIntosh, Donald M. Remy, Jonathan D. Schwartz, and Patricia Small. Present from the Federal Bureau of Investigation were Michael Gallagher, H. Michael Warren and Dave Yarbrough. Present from Booz-Allen & Hamilton were Henry Hodor and Michael McMenamin. Present from the Commission were Commissioner Harold Furchtgott-Roth, Commissioner Michael Powell, Dennis C. Johnson, Jr. and Peter A. Tenhula.

The subject of this meeting was the merits of the positions taken by the Department in previous filings regarding the proper scope and substance of the rule the Commission will issue in connection with the Communications Assistance for Law Enforcement Act. Specifically, the parties discussed the "punch-list" capabilities which the Department maintains are required by the Act. The Department also distributed a set of illustrative handouts, which are attached to this letter.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter are enclosed. Copies of this letter are simultaneously being provided to the Commission representatives identified above.

Very truly yours,

Daniel L. Kaplan
Daniel L. Kaplan
Attorney, Appellate Staff

No. of Copies rec'd 021
List A B C D E

Attachment

cc: Commissioner Harold Furchtgott-Roth, Commissioner Michael Powell, Dennis C. Johnson, Jr., Peter A. Tenhula

COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)

ASSISTANCE CAPABILITY PRESENTATION

October 13, 1998

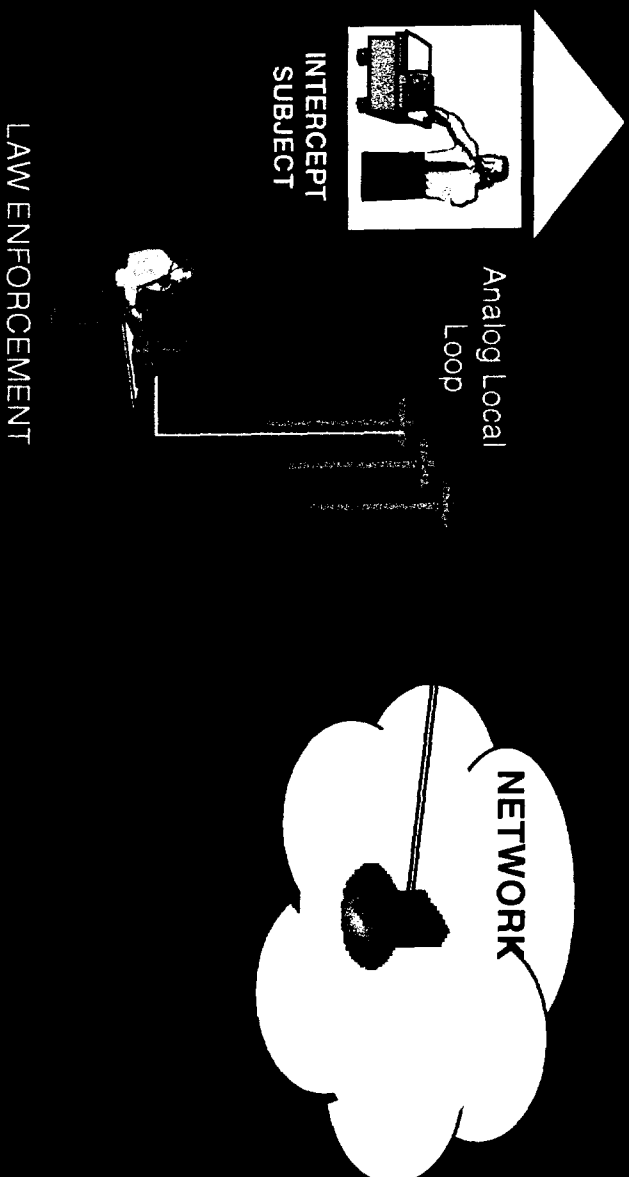
TITLE III INTERCEPTS

- Courts may issue orders "authorizing or approving the interception" of wire, electronic, or oral communications by federal and state law enforcement officers. (18 U.S.C. § 2516)
- Law enforcement must show probable cause that "the **facilities**" from which the communications are to be intercepted "are being used" in connection with the commission of a specified offense or "are leased to, listed in the name of, or commonly used by" a person involved in the offense. (18 U.S.C. § 2518(d))
- Law enforcement must show that "**normal investigative procedures** have been tried and have **failed** or reasonably appear to be unlikely to succeed if tried or to be too **dangerous**." (18 U.S.C. § 2518(3)(c))
- Interception order specifies "the nature and location of the communications **facilities**" as to which interception authority is granted (18 U.S.C. § 2518(4)(b))
- Title III intercept authority is **not** limited to communications involving the subscriber or named subjects. United States v. Kahn, 415 U.S. 143, 150-58 (1974).

PEN REGISTERS AND TRAP AND TRACE DEVICES

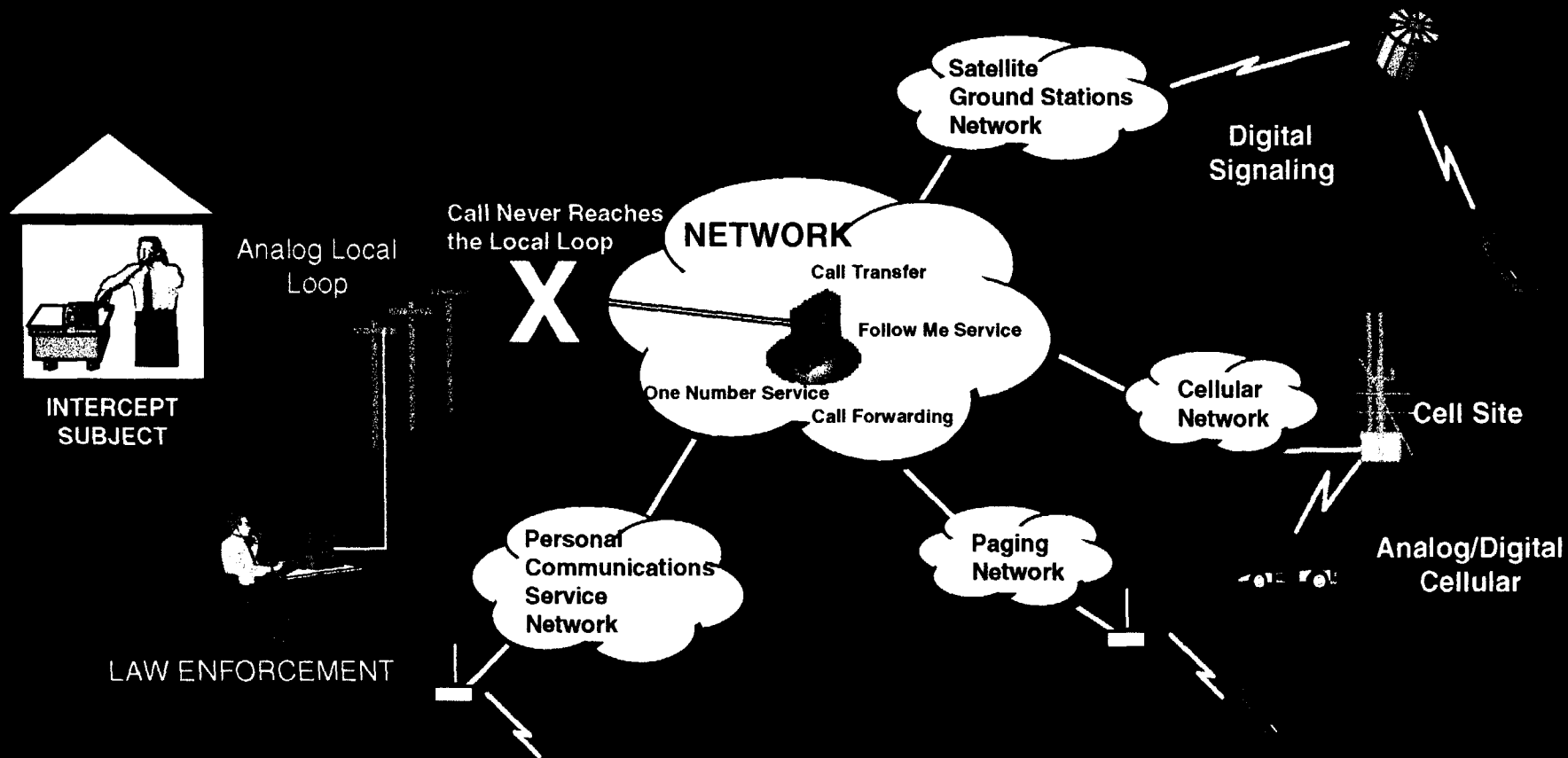
- Courts "shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device" when law enforcement certifies that "the information likely to be obtained * * * is relevant to an ongoing criminal investigation." (18 U.S.C. § 3123(a))
- Law enforcement must use "reasonably available" technology (if any) that that limits recording or decoding of electronic or other impulses to "the dialing and signaling information utilized in call processing." (18 U.S.C. § 3121(c)) (added by CAL EA § 207)

**AS TECHNOLOGY HAS CHANGED, LAW ENFORCEMENT'S ABILITY
TO CARRY OUT AUTHORIZED ELECTRONIC SURVEILLANCE HAS
STEADILY DIMINISHED**

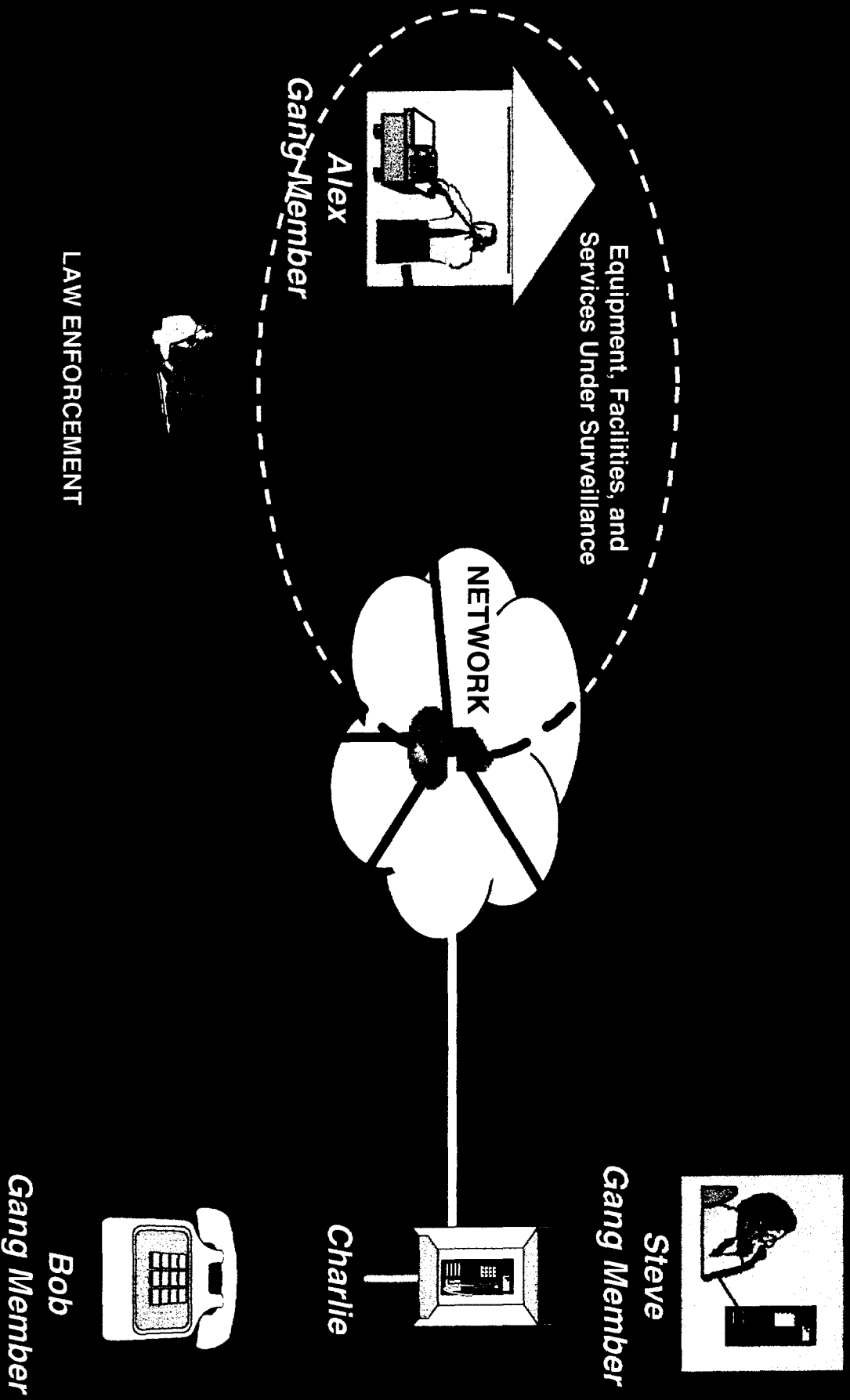


LAW ENFORCEMENT

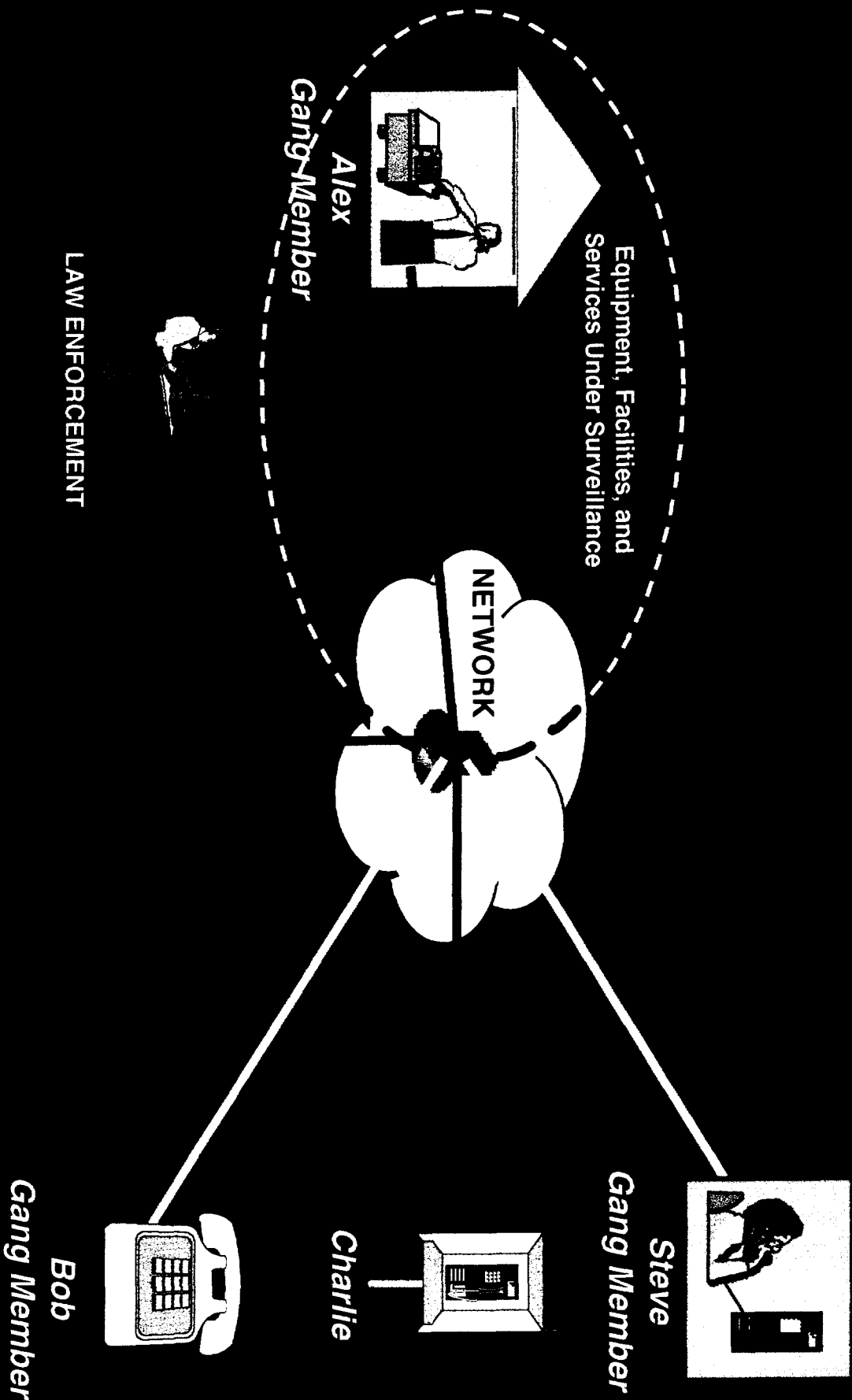
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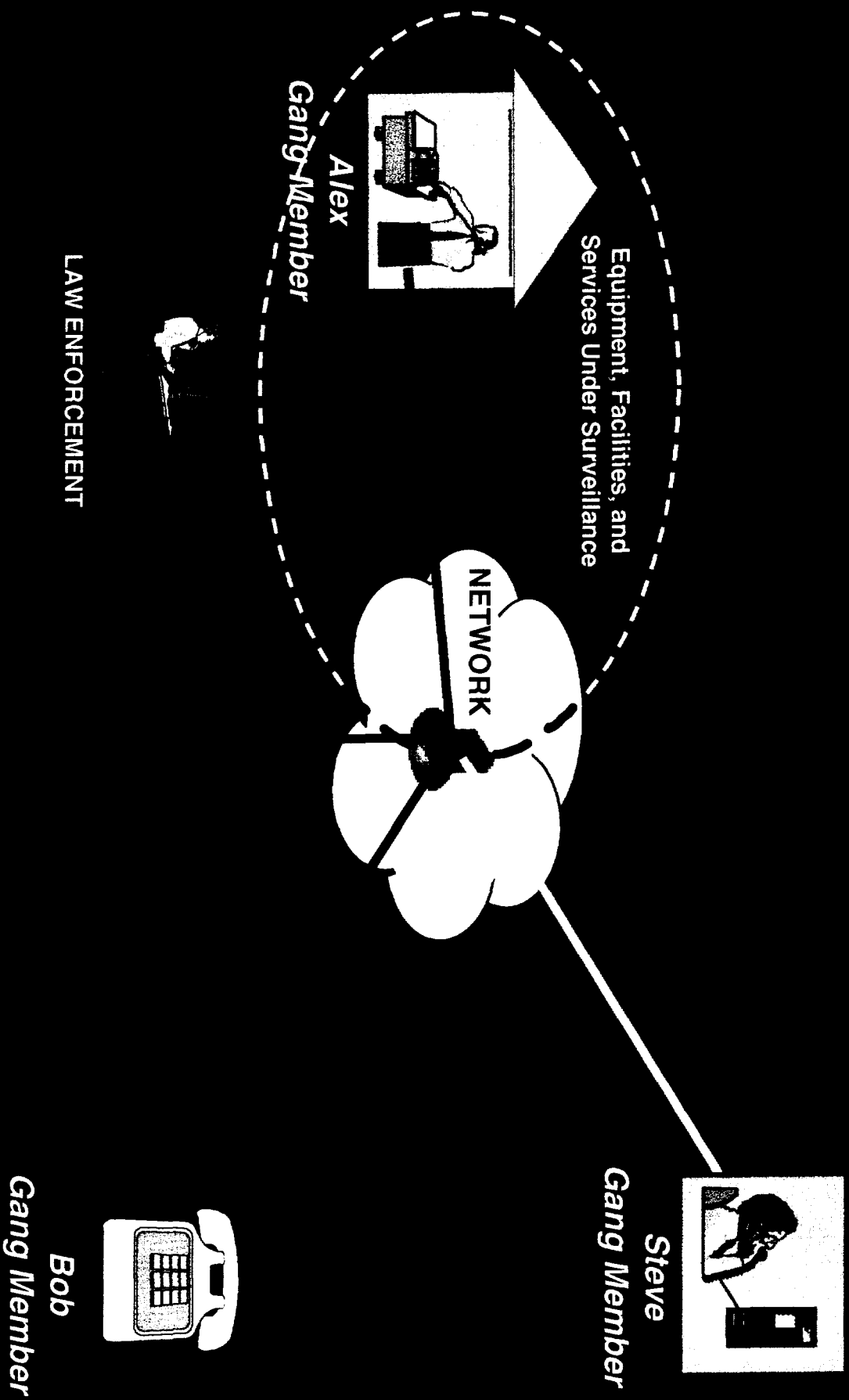
MULTIPARTY CALL SCENARIO



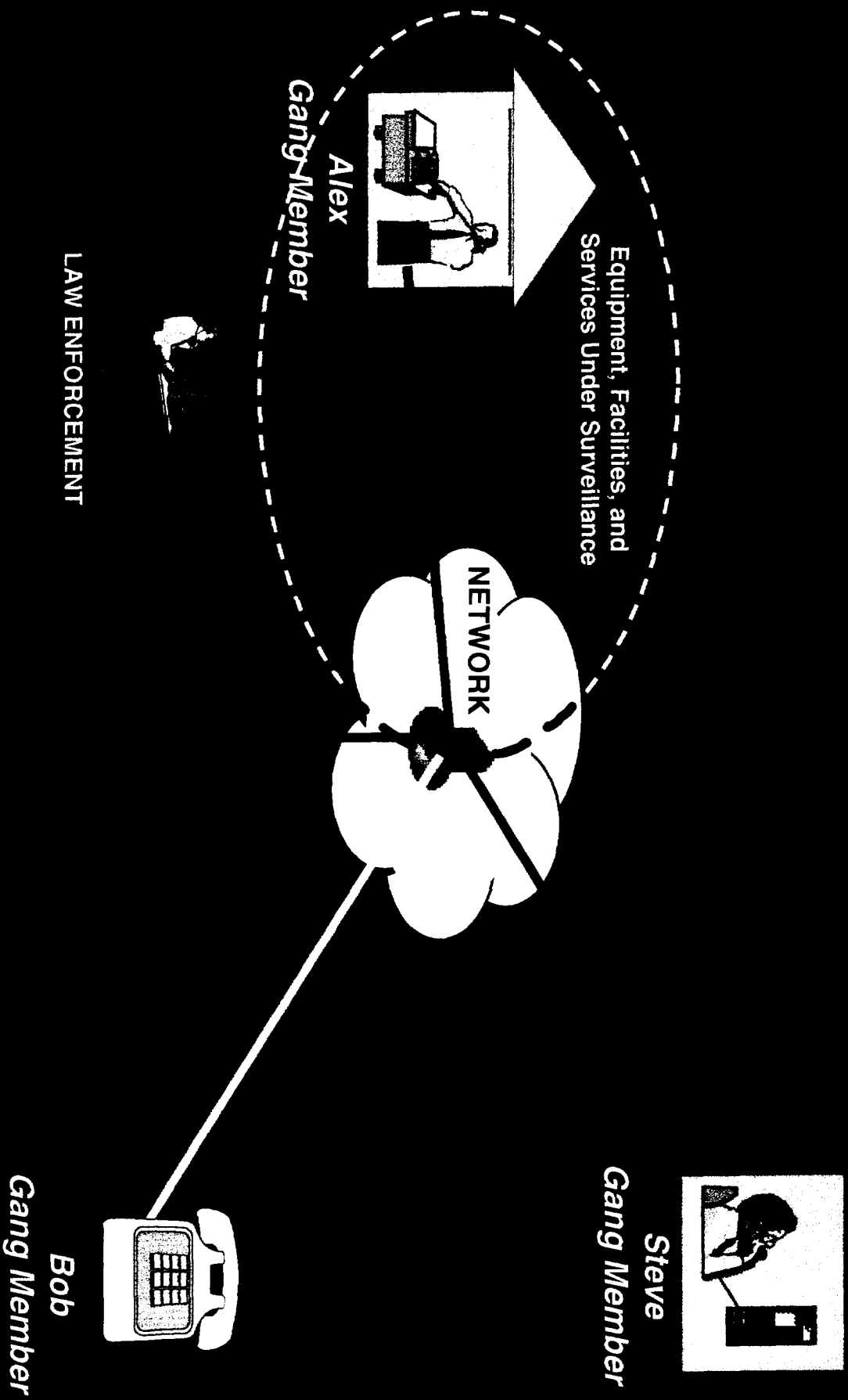
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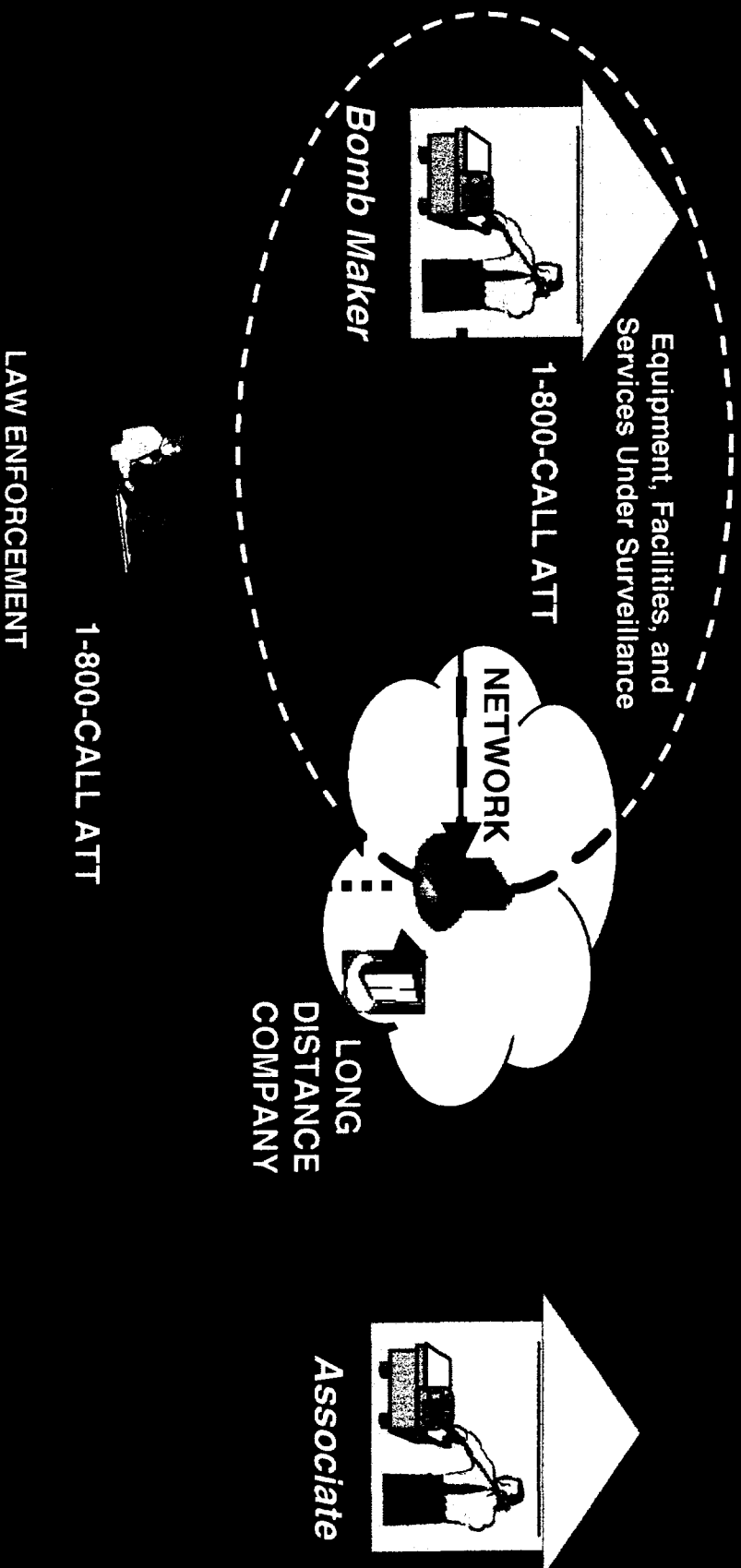
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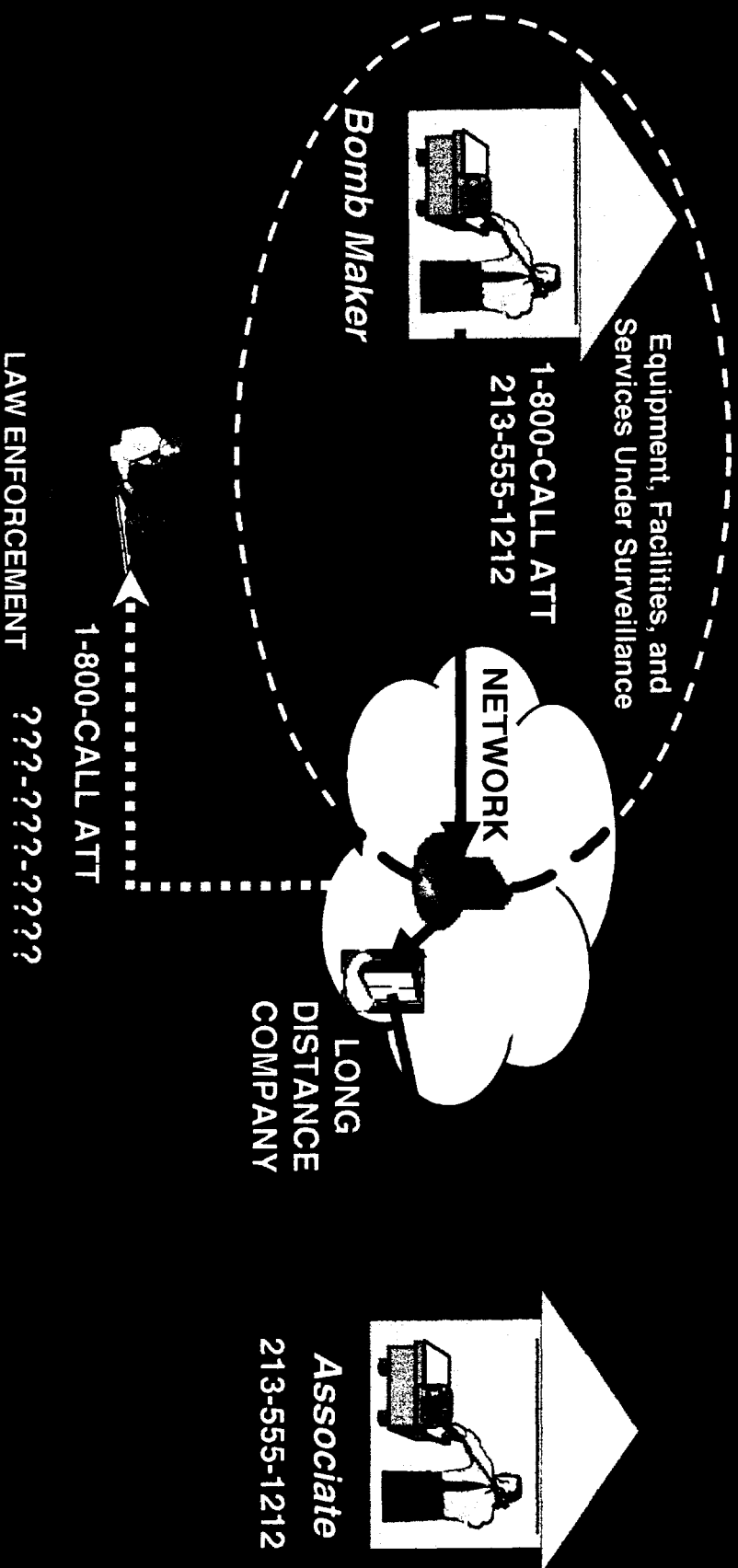
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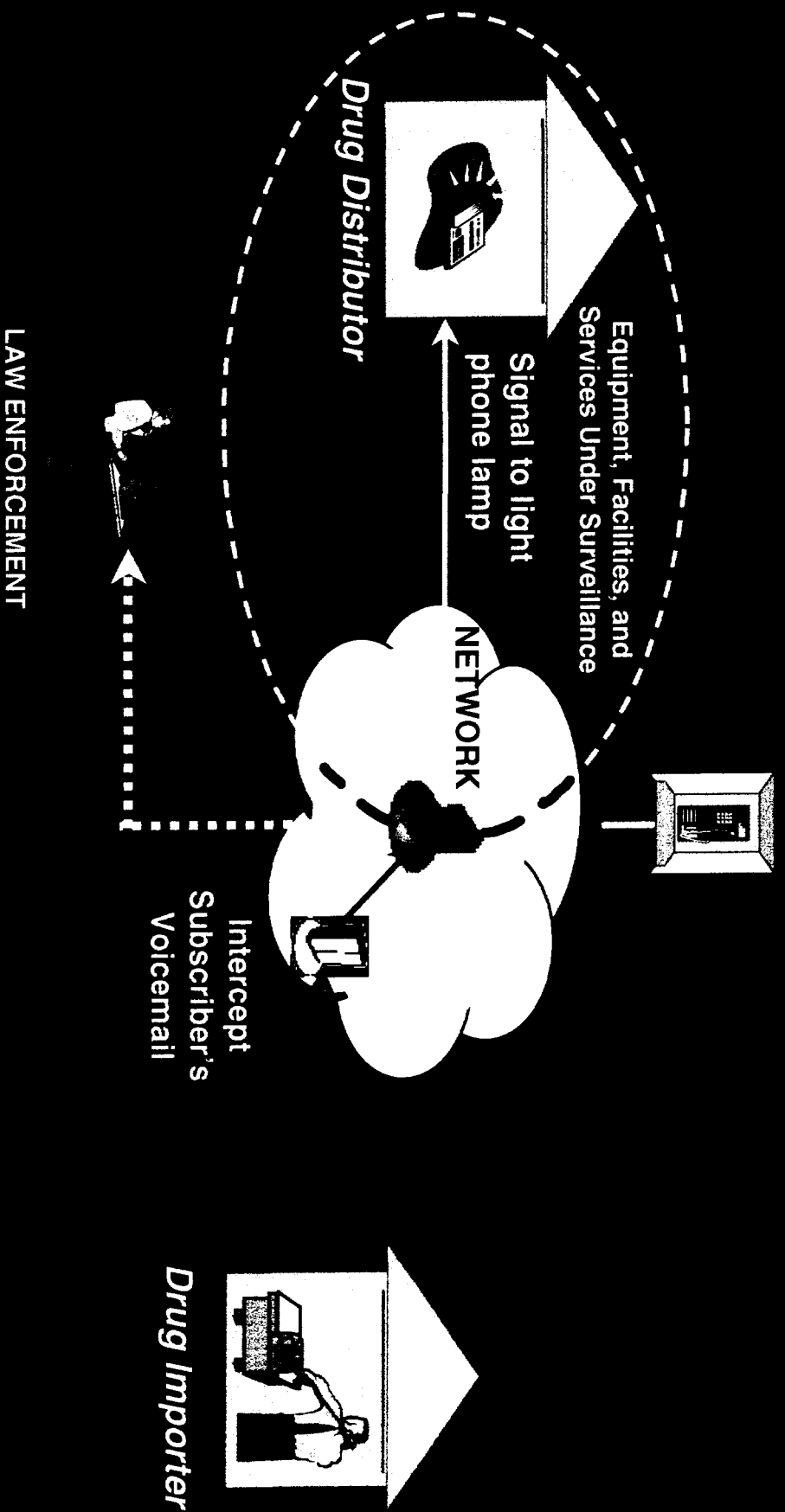
POST-CUT-THROUGH DIALED DIGIT SCENARIO



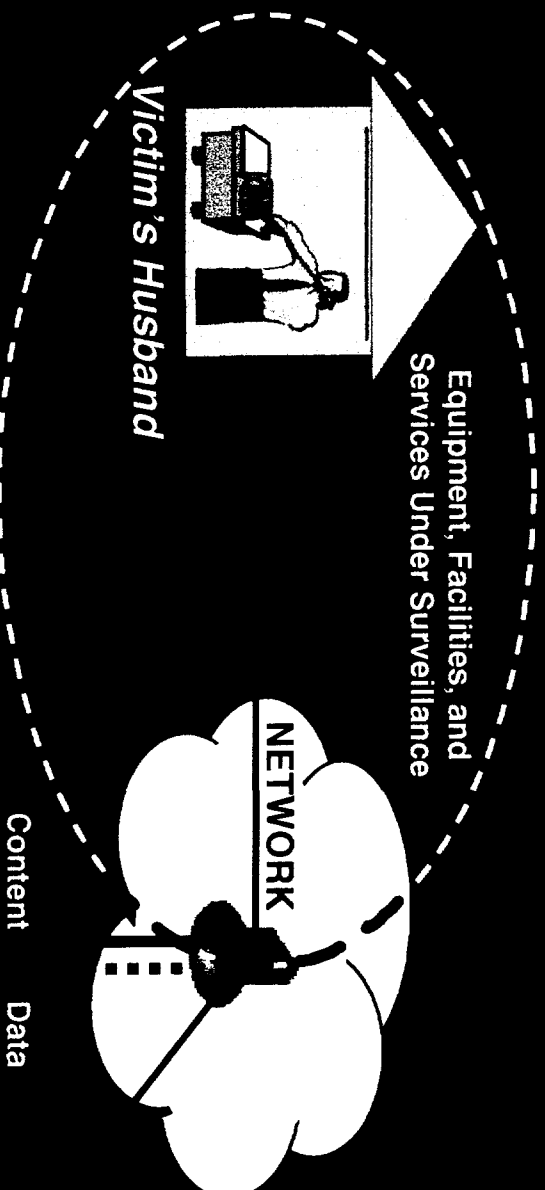
POST-CUT-THROUGH DIALED DIGIT SCENARIO



NOTIFICATION MESSAGE SCENARIO



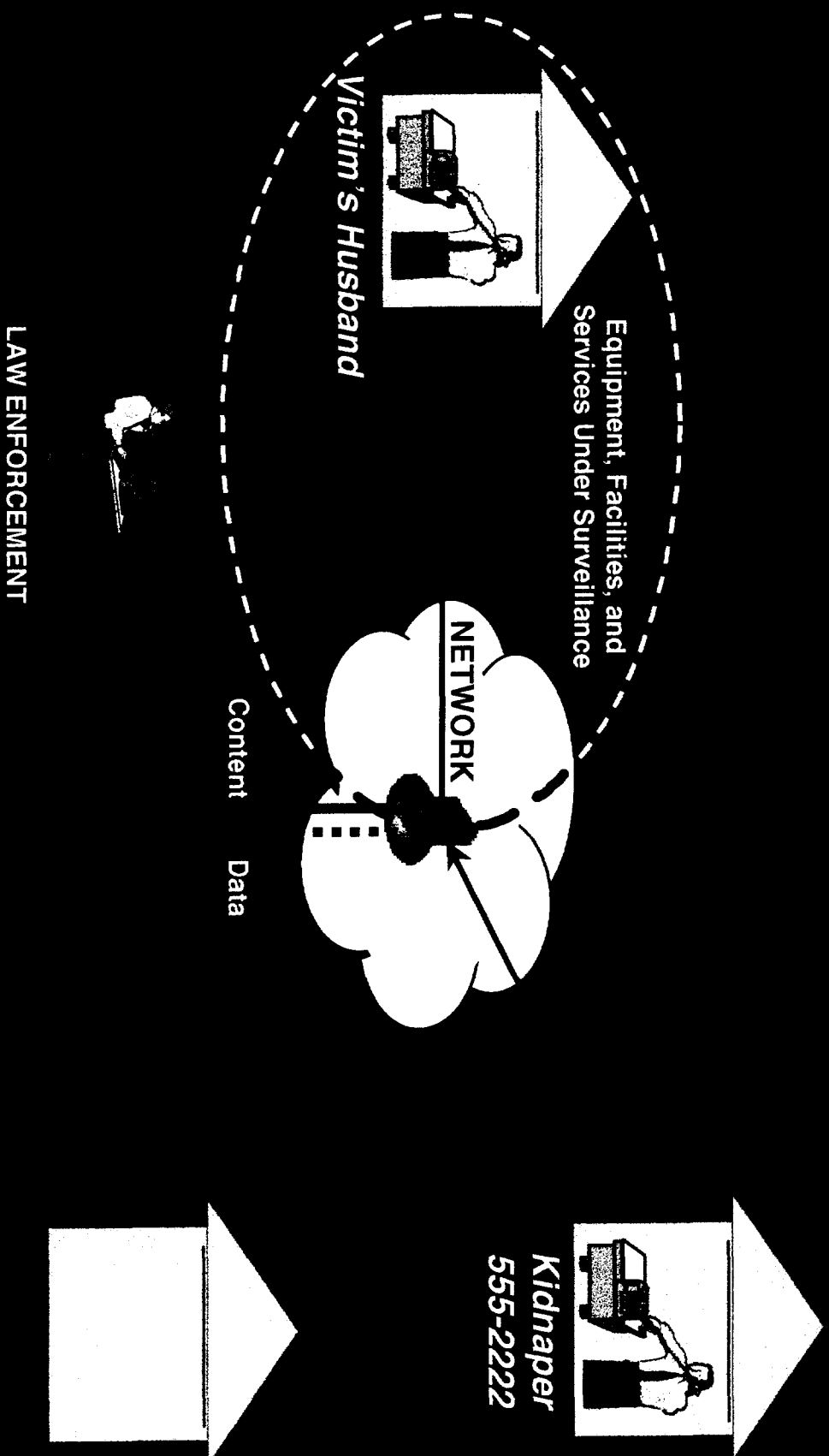
TIMELY DELIVERY SCENARIO



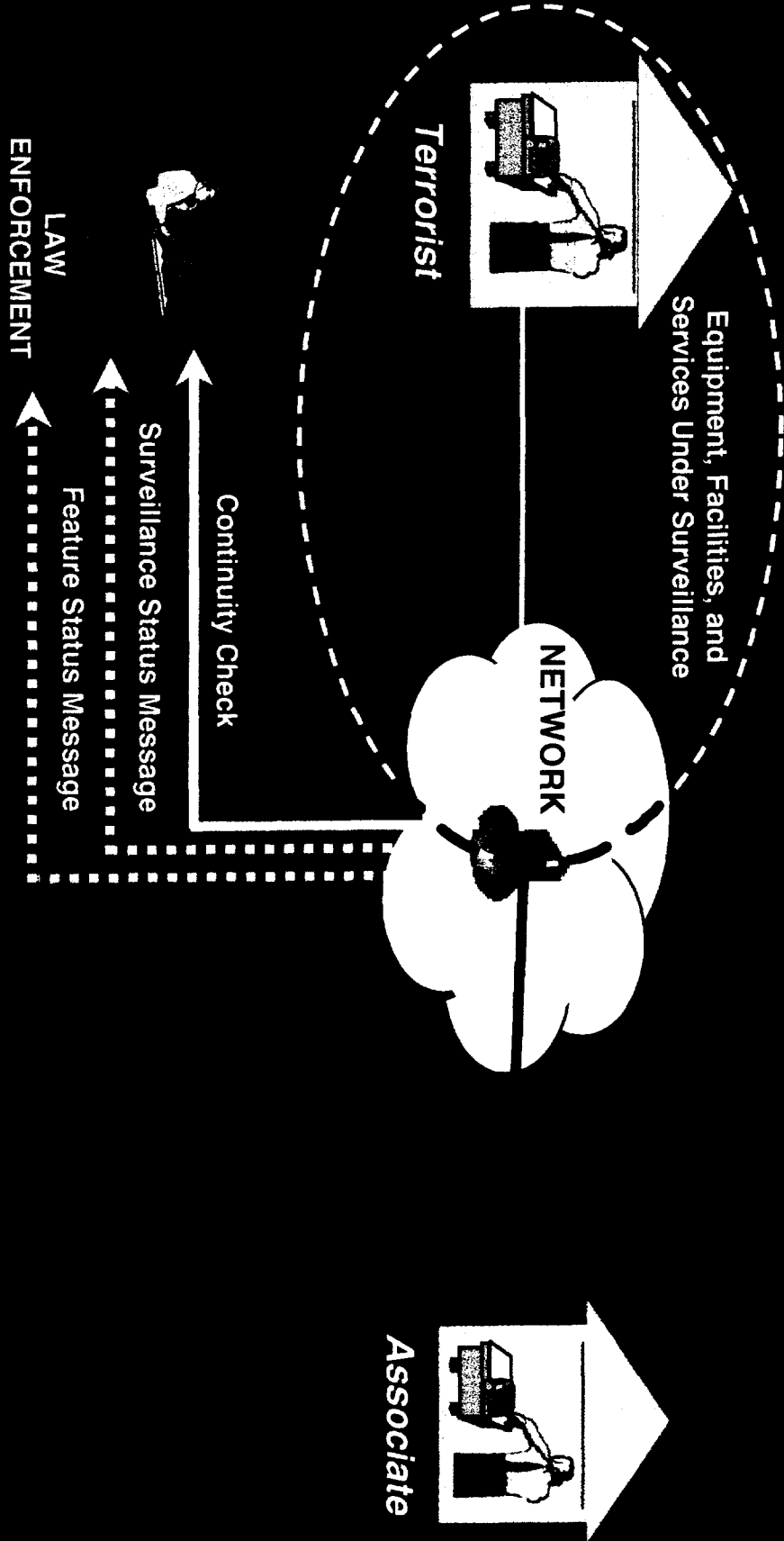
LAW ENFORCEMENT

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TIMELY DELIVERY SCENARIO



SURVEILLANCE INTEGRITY SCENARIO



CALEA PRESERVES LAW ENFORCEMENT'S ABILITY TO CONDUCT
LAWFULLY AUTHORIZED ELECTRONIC SURVEILLANCE WHILE
ACCOMMODATING THE PUBLIC INTEREST IN PRIVACY AND
INDUSTRY'S ABILITY TO OFFER NEW TECHNOLOGIES AND
SERVICES

THE J-STANDARD FAILS TO SATISFY THE SPECIFIC ASSISTANCE
CAPABILITY REQUIREMENTS OF SECTION 103 OF CALEA

CALEA'S ASSISTANCE CAPABILITY REQUIREMENTS

Call Content

- Carrier must provide access to “**all wire and electronic communications** carried by the carrier within a service area **to or from equipment, facilities, or services** of a subscriber of such carrier concurrently with their transmission * * * or at such later time as may be acceptable to the government” (§ 103(a)(1))

Call-identifying Information

- Carrier must provide access to reasonably available “**dialing or signaling information** that identifies the **origin, direction, destination, or termination** of each communication generated or received by a subscriber” (§ 102(2) and §103(a)(2))

Timeliness

- Carrier must provide call-identifying information “**before, during, or immediately after** the transmission of a wire or electronic communication” and “in a manner that allows it to be **associated with the communication** to which it pertains” (§ 103(a)(2))

Surveillance Integrity

- Carrier “**shall ensure**” that its equipment, facilities, and services will provide the required communications and call-identifying information to law enforcement (§ 103(a))

NINE MISSING CAPABILITIES

1. All Content of Conference Calls
2. Party Hold, Party Join, Party Drop Messages
3. Subject-initiated Dialing and Signaling
4. Notification Message
5. Timely Delivery of Call-identifying Information
6. Surveillance Status Message
7. Feature Status Message
8. Continuity Check
9. Post-cut-through Dialed Digits